

RECORDING REQUESTED BY:

Neighborhood Investors, LLC
1978 W. Zinfandel Lane
St. Helena, California 94574

WHEN RECORDED, MAIL TO:

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief



1998 038497
OFFICIAL RECORDS OF
NAPA COUNTY
JOHN TUTEUR

AT REQUEST OF:

12/22/1998 MARK S POLLOCK
Fee: \$ 10:44 am
TT : \$ 40.00 Pgs: 12
.00

FILE COPY

I V C

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: NEIGHBORHOOD INVESTORS, LLC PROPERTY
607 S. ST. HELENA HIGHWAY
ST. HELENA, CALIFORNIA 94574
(ASSESSOR'S PARCEL NUMBER 027-150-001)

This Covenant and Agreement ("Covenant") is made by and between Neighborhood Investors, LLC, a California limited liability company (the "Covenantor"), the current owner of property situated in the unincorporated area of St. Helena, County of Napa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous substances as defined in Health and Safety Code (H&SC) section 25316 and hazardous materials as defined in HS&C section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.1. The Property, totalling approximately 1.40 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by St. Helena Highway to the East, County of Napa, State of California. This property is more specifically described as 607 South St. Helena Highway, County Assessor's Parcel No: 027-150-001.

1.2. A limited portion of the Property is more particularly described in Exhibit "B" which is attached and incorporated by this reference ("Capped Property") as defined below. The [Capped] Property is located in the area now generally beneath the market structure shown on Exhibit "B" and covering the total subsurface inside its perimeter foundation. The [Capped] Property is also more specifically described as encompassing the subsurface of the structure on County Assessor's Parcel Number 027-150-001.

1.3. The Property is being remediated pursuant to a Preliminary Endangerment Assessment and Voluntary Cleanup Agreement. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including volatile organic compounds chlordane and fenvalerate remain in the soil and under portions of the Property, the Preliminary Endangerment Assessment provided that a deed restriction would be required as part of the remediation. The Preliminary Endangerment Assessment was approved by the Department on June 30, 1998. Remediation includes installing and maintaining a synthetic membrane cover ("Cap") over the Capped Property. The Cap consists of a low permeability synthetic membrane and reinforced concrete covering all within the perimeter foundation of the subject structure. The response action also includes the installation and operation of: (1) a passive gas ventilation system on the Capped Property which removes miscellaneous gas/vapors migrating upward from under the Cap. The operation and maintenance of the Cap and gas ventilation system is pursuant to an Operation and Maintenance Plan incorporated into the Operation and Maintenance Agreement between Covenantor and the Department.

1.4. As detailed in the Final Preliminary Endangerment Assessment approved by the Department on June 30, 1998 all or a portion of the surface and subsurface soils within 10 feet of the surface on the Property contain hazardous substances, as defined in H&SC section 25316, which include the following organic contaminants of concern: chlordane, fenvalerate, DDE, DDD, DDT, heptachlor, epoxide, and dieldrin. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to commercial and industrial use.

ARTICLE II

DEFINITIONS

- 2.1. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.
- 2.2. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.
- 2.3. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.1. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5 (a) (1) (c) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.2. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a) (1) (c), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.3. Written Notice of Release of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessees, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.4. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.5. Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.2. Soil Management.

- (a) No activities that will disturb the soil at or below the Cap, excavation, grading, removal, trenching, filling, earth movement or mining shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of local, state and federal laws.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property in any fashion which will disturb or compromise the Cap.

4.3. Prohibited Activities.

- (a) Raising of food (cattle, food crops, cotton);
- (b) Drilling for drinking water, oil, or gas without prior written approval by the Department.
- (c) Extraction of groundwater for purposes other than site remediation or construction dewatering.

4.4. Non-Interference with Cap. Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior written approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity of the Cap.
- (c) The Cap shall not be altered without prior written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any disturbance to the Cap that could affect the ability of the Cap to contain subsurface hazardous wastes or hazardous materials in the Capped Property, and (ii) the type and date of repair of such disturbance.

Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.5. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health, or safety, or the environment.

4.6. Access for Implementing O&M. The entity or person responsible for implementing the Operation and Maintenance Agreement, shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V

ENFORCEMENT

5.1. Enforcement. Failure of the Covenantor or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements") herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.1. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.2. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.3. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.1. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.2. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.3. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Napa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.4. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be deemed effective: (1) When delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To: Neighborhood Investors, LLC
1978 W. Zinfandel Lane
St. Helena, California 94574

Copy to: Department of Toxic Substances Control
Northern California Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.


7.5. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.6. Statutory References. All statutory references include successor provisions.

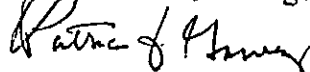
IN WITNESS WHEREOF, the Parties execute this Covenant.

NEIGHBORHOOD INVESTORS, LLC:

Date: 10-9-98

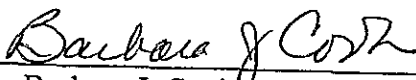
By: 
John A. Komes, Manager

Date: 10-9-98

By: 
Patrick J. Garvey, Manager

DEPARTMENT OF TOXIC SUBSTANCES CONTROL:

Date: 11-5-98

By: 
Barbara J. Cook, P.E., Chief
Northern California
Coastal Cleanup Operations Branch

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

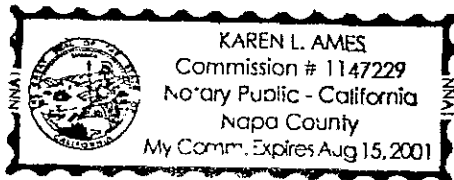
State of CALIFORNIA

County of NAPA

On 10-9-98 before me, KAREN L. AMES, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JOHN A KOMES AND PATRICK J. GARVEY
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Karen L. Ames
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA

ALL-PURPOSE

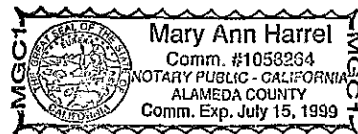
ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF Alameda)

On 11-5-98 before me, Mary Ann Harrel, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, BARBARA J. COOK
~~personally known to me~~ proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Mary Ann Harrel (SEAL)
NOTARY PUBLIC SIGNATURE

OPTIONAL INFORMATION

TITLE OR TYPE OF DOCUMENT _____
DATE OF DOCUMENT _____ NUMBER OF PAGES _____
SIGNER(S) OTHER THAN NAMED ABOVE _____

EXHIBIT "A"

PARCEL ONE:

Commencing on the Westerly line of the State Highway from Napa to St. Helena, distant thereon North 43° 30' West 410 feet from the intersection thereof with the Northerly one of Inglewood Avenue; thence along the West line of said highway North 43° 30' West 200 feet; thence South 46° 30' West 210 feet; thence South 43° 30' East 200 feet; thence North 46° 30' East 210 feet to the point of commencement.

PARCEL TWO:

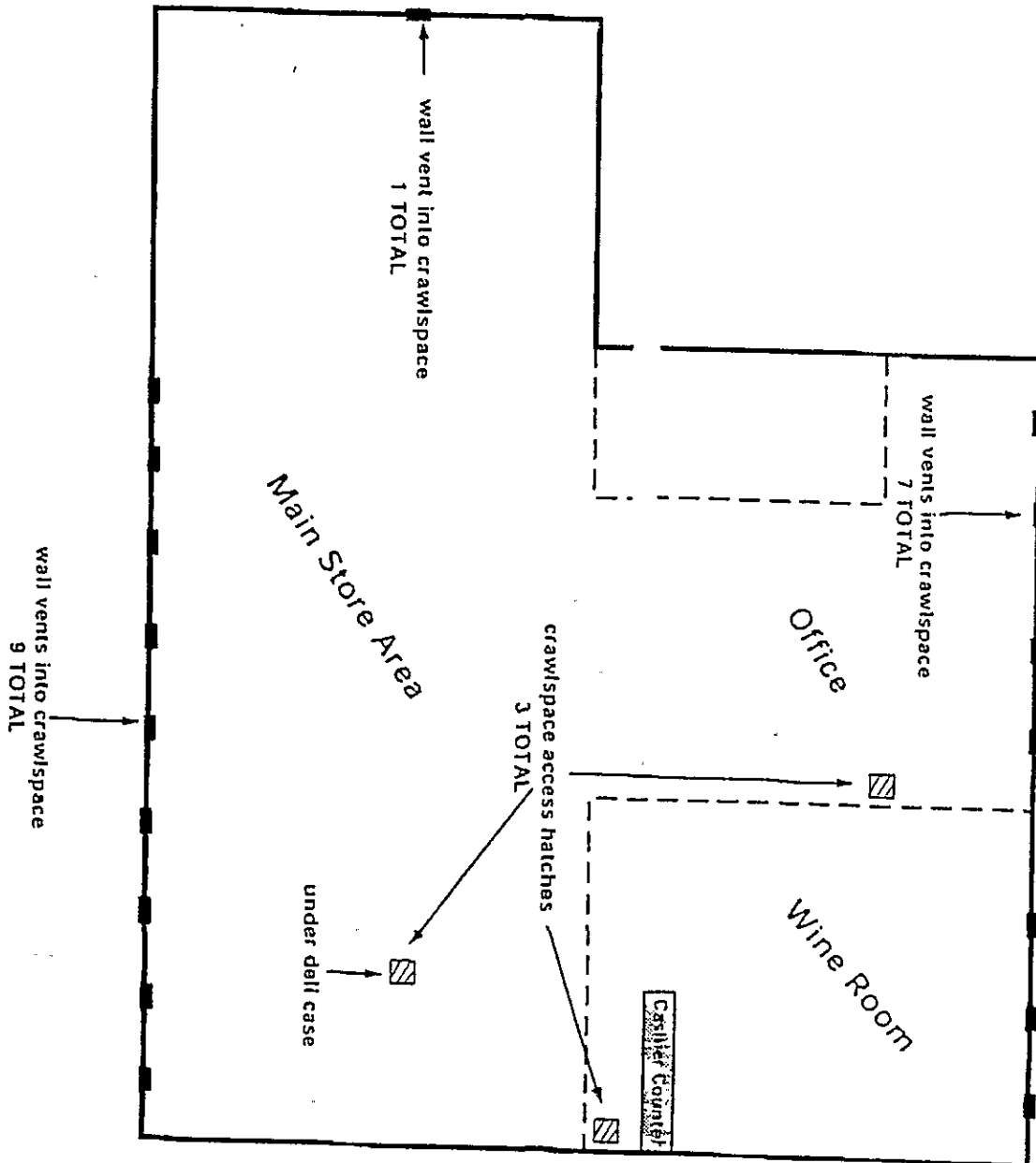
Commencing at a point on the Southwestern line of the State Highway leading from Napa to St. Helena distant thereon North 43° 30' West 300 feet from the intersection thereof with the Northwestern line of Inglewood Avenue (formerly Sumner Avenue); running thence North 42° 30' West along the Southwestern line of said State Highway, 110 feet; thence South 46° 30' West 210 feet; thence South 43° 30' East 110 feet; thence North 46° 30' East 210 feet to the point of commencement.

APN #027-150-001

Exhibit B

END OF DOCUMENT

Facility Plan - 607 South St. Helena Highway, St. Helena, California



wall vents into crawlspace
9 TOTAL

wall vent into crawlspace
1 TOTAL

wall vents into crawlspace
7 TOTAL

Main Store Area

Office

Wine Room

Crawler Counter

crawlspace access hatches
3 TOTAL

under dell case



Highway 29